

Fiscal Monitoring Report

LME / MCO NAME: VAYA HEALTH FOR THE PERIOD ENDING: 03/31/2022
 # of month in the fiscal year (July = 1, August = 2, . . . , June = 12) =====> 9

1. REPORT OF BUDGET VS. ACTUAL

	(1)	(2)	(3)	(4)	(5)	(6)
	PRIOR YEAR		CURRENT YEAR 2021-2022			
	2020-2021					
	BUDGET	ACTUAL	BUDGET	ACTUAL	BALANCE (Col. 3-4)	ANNUALIZED PERCENTAGE
REVENUE						
Interest Earned	50,000	45,255	52,000	29,295	22,705	75.12%
IGT Cardinal Income		-	7,730,727	10,565,398	(2,834,671)	273.34%
Appropriation of Fund Balance	1,992,790	-	3,860,084	-	3,860,084	-
Other Local	1,260,724	1,126,484	8,055,724	1,035,383	7,020,341	17.14%
Total Local Funds	3,303,514	1,171,739	19,698,535	11,630,076	8,068,459	78.72%
County Appropriations (by County, includes ABC Funds):						
Alexander County	50,000	50,000	50,000	37,500	12,500	100.00%
Allegheny County	109,709	109,709	109,709	82,282	27,427	100.00%
Ashe County	189,566	189,566	189,566	142,175	47,392	100.00%
Avery County	89,600	89,600	89,600	67,200	22,400	100.00%
Buncombe County	600,000	600,000	600,000	450,000	150,000	100.00%
Caswell County	-	-	48,599	-	48,599	0.00%
Caldwell County	123,438	125,017	127,138	91,564	35,574	96.03%
Chatham County	-	-	206,725	99,113	107,613	95.89%
Cherokee County	75,000	75,000	75,000	56,250	18,750	100.00%
Clay County	15,000	15,000	15,000	11,250	3,750	100.00%
Franklin County	-	-	54,850	26,167	28,683	95.41%
Graham County	6,000	6,000	6,000	4,500	1,500	100.00%
Granville County	-	-	56,400	26,934	29,465	95.51%
Haywood County	105,500	106,867	109,000	80,907	28,093	98.97%
Henderson County	528,612	528,612	528,612	396,459	132,153	100.00%
Jackson County	123,081	123,081	123,081	92,311	30,770	100.00%
Macon County	106,623	106,623	106,623	79,967	26,656	100.00%
Madison County	30,000	30,000	30,000	22,500	7,500	100.00%
McDowell County	67,856	67,856	67,856	50,892	16,964	100.00%
Mitchell County	18,000	18,000	18,000	13,500	4,500	100.00%
Person County	-	-	72,642	34,321	38,321	94.49%
Polk County	79,191	79,211	78,991	59,204	19,787	99.93%
Rowan County	-	-	246,000	123,000	123,000	100.00%
Swain County	28,500	28,769	30,000	21,650	8,350	96.22%
Transylvania County	99,261	99,261	99,261	74,446	24,815	100.00%
Vance County	-	-	83,050	40,674	42,376	97.95%
Watauga County	171,194	171,194	171,194	128,396	42,799	100.00%
Wilkes County	234,112	236,472	236,612	178,172	58,440	100.40%
Yancey County	26,000	26,000	26,000	19,500	6,500	100.00%
Total County Funds	2,876,243	2,881,837	3,655,507	2,510,832	1,144,675	91.58%
DMH/DD/SAS State and Federal Funding	97,305,878	91,548,697	101,810,310	66,103,775	35,706,535	86.57%
DHB Capitation Funding (Medicaid)	390,822,193	391,188,352	531,633,113	379,193,086	152,440,027	95.10%
DHB Risk Reserve Funding (Medicaid)	5,951,608	6,011,422	2,700,000	2,689,703	10,297	99.62%
All Other State/Federal Funds	1,390,000	1,498,087	1,845,000	1,467,087	377,913	106.02%
Total State, Federal and Medicaid Funds	495,469,679	490,246,558	637,988,423	449,453,651	188,534,772	102.66%
TOTAL REVENUE	501,649,436	494,300,132	661,342,465	463,594,559	197,747,906	93.47%
EXPENDITURES:						
Administration	72,725,697	51,320,394	105,734,497	67,842,556	37,891,941	85.55%
LME Provided Services (Service Support)	2,266,624	1,935,794	4,020,390	2,247,313	1,773,077	74.53%
Provider Payments (State Funds)	58,711,464	59,135,654	67,787,962	44,884,302	22,903,660	88.28%
Provider Payments (Federal Funds)	32,434,186	28,791,807	25,378,724	16,263,945	9,114,779	85.45%
Provider Payments (County Funds)	2,876,243	2,876,658	3,655,507	1,868,775	1,786,732	68.16%
Provider Payments (Medicaid)	331,537,697	331,620,936	453,300,763	314,320,618	138,980,145	92.45%
Permanent Supported Housing and Back at Home Payments	1,097,524	913,702	1,464,622	863,531	601,090	78.61%
TOTAL EXPENDITURES	501,649,436	476,594,946	661,342,465	448,291,041	213,051,424	90.38%
Net Income or (Loss) (from Operations and Risk Reserve)		17,705,187		15,303,518		
Less Risk Reserve Revenue		(6,011,422)		(2,689,703)		
NET INCOME OR (LOSS) FROM OPERATIONS		11,693,765		12,613,815		
2. FUND BALANCE						
Restricted Fund Balance for Risk Reserve		55,551,671		89,512,184		
Restricted Fund Balance - State Statute, Prepaids & Investment in Fixed Assets		11,106,977		20,360,026		
Unrestricted Fund Balance (including Board Commitments)		31,275,560		66,143,453		
TOTAL FUND BALANCE		97,934,208		176,015,663		
3. CURRENT CASH POSITION						
Current Cash in Bank (Including Risk Reserve)				304,071,712		
Less Risk Reserve Cash				(89,512,184)		
TOTAL OPERATING CASH				214,559,529		
4. ESTIMATED SERVICES INCURRED BUT NOT REPORTED/PAID (IBNR)				75,810,233		

*See additional Document

**RESOLUTION DECLARING PERSONAL PROPERTY AS SURPLUS
AND AUTHORIZING THE DISPOSITION OF PERSONAL PROPERTY
BY DONATION**

WHEREAS, Henderson County owns the ambulance Exhibit B, hereinafter referred to as "surplus property", that is either obsolete or no longer needed for any governmental use by the County; and

WHEREAS, the Henderson County Board of Commissioners is desirous of declaring the ambulance as surplus and transferring to the Henderson County Rescue Squad via donation as authorized by N.C.G.S. 160A-280; and

WHEREAS, it is the intent of the County to donate said surplus property.

NOW THEREFORE BE IT RESOLVED, by the Henderson County Board of Commissioners as follows:

1. The ambulance itemized on the attached Exhibit B is hereby declared to be surplus property.
2. Henderson County Emergency Medical Services is hereby authorized to transfer by donation, the surplus property described above to the Henderson County Rescue Squad.
3. Henderson County makes no express or implied warranties of merchantability of any surplus property, or part thereof, or its fitness for any particular purpose regardless of any oral statements that may be made concerning the surplus property or any part thereof.

THIS the 18th of May 2022.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

William Lapsley, Chairman

ATTEST:

Denisa Lauffer
Denisa Lauffer, Clerk to the Board

[OFFICIAL SEAL]

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

HENDERSON COUNTY TRANSIT CONTRACT
APPLE COUNTRY PUBLIC TRANSIT

This Agreement is made and entered this the 18th of May, 2022, by and between **Henderson County**, a body politic and corporate under the laws of the State of North Carolina (hereinafter the "COUNTY") and **Western Carolina Community Action, Inc., a North Carolina non-profit corporation doing business as WNC Source** (hereinafter the "SERVICE PROVIDER").

WITNESSETH

WHEREAS the County is desirous of providing Henderson County citizens with transit opportunities;

WHEREAS the Service Provider has the ability and expertise to provide transit services; and

WHEREAS the County and the Service Provider would like to work together to provide transit services in Henderson County;

NOW THEREFORE, for valuable consideration and mutual promises, the parties hereto agree as follows:

1. SCOPE OF WORK

The Scope of Work is outlined in the Request for Proposals dated December 1, 2021.

2. DURATION

This contract shall be in effect the period of three (3) years of revenue service beginning July 1, 2022 and ending June 30, 2025. Both parties retain the option of renewing the contract for three (3) additional one (1) year periods; such an option will be exercised by both parties by written agreement at least one hundred and twenty (120) days prior to June 30, 2025 and depending upon available funds. The Service Provider's original price proposal in the solicitation, offer, and award will remain in effect in the event both parties exercise any options. Any contract renewals shall include all relevant provision of this solicitation.

3. COMPENSATION AND METHOD OF PAYMENT

The County shall make payments to the Service Provider within forty-five days (45) after receipt of invoices and all required monthly reports. The monthly payments shall be based on service performed in the preceding month.

4. MAXIMUM PAYMENT

Payments under this Agreement are limited to those specified Attachment One in the WNC Source Best and Final Offer (BAFO) submitted by the Service Provider on March 10, 2022. It is expressly understood and agreed to by the Service Provider and the County that in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed the BAFO amount without a written amendment to this Agreement consented to by both parties in writing.

5. TRANSIT VEHICLE REPLACEMENT

The COUNTY will replace transit vehicles by the end of their useful life, as defined in requirements set forth by the Federal Transit Administration.

6. INDEMNIFICATION

Work to be performed as provided herein shall be done by the Service Provider as a separate and independent organization. The County shall not be liable for claims for damages or losses arising out of the performance of the Agreement by the Service Provider, its employees, officers, agents, and the Service Provider shall indemnify and hold harmless, to the extent allowed by law, the County, its officers, employees, and agents from all such claims arising under this Agreement.

7. NOTICES

All notices shall be sent to parties at the following addresses:

For Service Provider

David White, Chief Executive Officer
PO Box 685
Hendersonville, NC 28793-0685

For County

Henderson County Planning Dept. c/o
Janna Bianculli, Senior Planner
100 N. King Street
Hendersonville, NC 28792

8. ASSIGNABILITY

This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party. The Project may not be continued by a successor to either party without the prior written consent of the non-moving party.

9. MISCELLANEOUS PROVISIONS

The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.

10. GOVERNING LAW

The laws of the State of North Carolina shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

11. COMPLIANCE WITH APPLICABLE LAWS

The SERVICE PROVIDER shall comply with all applicable federal, state, and local laws and regulations relating directly or indirectly to providing transit services.

- a. All buses and other equipment shall be maintained and operated at all times in compliance with all applicable rules, regulations and codes governing the operation of vehicles of public conveyance of the COUNTY and its municipalities, and those of the State of North Carolina and the United States.
- b. The COUNTY shall comply with all federal and state laws and regulations applicable to the COUNTY and related directly or indirectly to providing transit services.
- c. The SERVICE PROVIDER shall comply with all federal laws and regulations applicable to

Federal Transit Administration regarding procurement and third-party contracting, and all laws, regulations and contractual provisions enforced by any grant recipient from the Federal Transit Administration.

12. DOCUMENTS OF INCORPORATION

This Agreement includes terms and conditions described in the December 2021 Request for Proposals and the March 10, 2022 Best and Final Offer. The foregoing is hereby made part of this Agreement and incorporated herein by reference. In the event that any terms and conditions in these documents are inconsistent, this Agreement represents the final terms and conditions as of the date of execution.

13. SEVERABILITY

If any of the provision contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such as invalidity, illegality or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. PARTIES TO THIS AGREEMENT

This Agreement gives no rights or benefits to anyone other than the parties to this Agreement.

15. ORIGINAL

A signed copy of this Agreement shall be considered as an original.

16. BREACH, TERMINATION, AND REMEDY

- a. Termination for Convenience: the COUNTY may terminate this CONTRACT at any time for any reason upon ninety (90) days written notice to the SERVICE PROVIDER. Any notice to terminate this CONTRACT shall be given by certified mail, return receipt requested. The effective date of termination shall be ninety (90) days from the date of receipt as noted on the return receipt. The SERVICE PROVIDER may terminate this CONTRACT at any time for any reason upon one hundred eighty (180) days written notice to the COUNTY. Any notice to terminate this CONTRACT shall be given by certified mail, return receipt requested. The effective date of termination shall be ninety (90) days from the date of receipt as noted on the return receipt.
- b. Termination for Cause: Either party may terminate this CONTRACT should either party default in the performance of any of the terms, covenants, obligations, or conditions of this CONTRACT and the non-defaulting party may proceed by following any of the options listed below in the Default section.
- c. A written request by the COUNTY to the SERVICE PROVIDER, to reduce the level of fixed route service shall not be construed as a partial termination of the contract, unless the weekday scheduled revenue hours for fixed route service are reduced below seventy-five percent (85%) of the initial level.

17. AMENDMENTS

The terms of this Agreement may be amended by the mutual consent in writing by the parties hereto.

18. DEFAULT

Default shall mean a failure to comply with any of the provisions of this Agreement or any applicable County, State, or Federal laws, which do not fall within the force majeure provisions of this

Agreement.

- a. In the event of default under this Agreement, non-defaulting party shall send written notice of specific instances of failure to fulfill any of its obligations under the Agreement and, within ten (10) days of the date of notice is sent, such failure has not cured or otherwise remedied to the satisfaction of the non-defaulting party during this ten-day period, then the non-defaulting party may, at its election, terminate the Agreement in whole or in part, for default. Non-defaulting party may give written notice of termination; or
- b. In the event of default under this Agreement, the non-defaulting party shall have the rights, but not the obligation, to cure such default and to charge the defaulting party for the costs of curing the default against any sums due or which become due to the defaulting party under this Agreement. The non-defaulting party shall use the most economically reasonable method of curing any such defaults; or
- c. The SERVICE PROVIDER will be in default should the SERVICE PROVIDER become insolvent or unable to pay its debts as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the Bankruptcy Code of 1978, as amended, be brought by or against the SERVICE PROVIDER; or
- d. The SERVICE PROVIDER will be in default should a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of the COUNTY, would be fruitless to appeal, be entered against the SERVICE PROVIDER by any court or other tribunal which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days and (b) an insurer acceptable to the COUNTY has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance and (c) or the COUNTY is otherwise reasonably satisfied that the SERVICE PROVIDER would be able to satisfy the judgment without affecting its ability to provide those services.

19. FORCE MAJEURE

Any delay or failure of performance by either party shall not constitute a default or give rise to any claims for damages if and to the extent the failure is primarily caused by any act, event or condition reasonably beyond that party's control and adversely affecting its ability to perform its obligations including but not limited to:

- a. Acts of God, lightening, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, failure of utilities, flood, nuclear radiation, or any other act by third parties that interferes with operations.
- b. Condemnation or other taking by any government body, change in any applicable law, rule, regulation, ordinance, or permit condition not in effect as of the date hereof.
- c. Any order, judgment, action or determination of any federal or state court, administrative agency or government body.

20. EMERGENCIES

In the event of a declared civil disorder or natural catastrophe, the SERVICE PROVIDER shall direct the employees to operate as ordered by federal, state, and/or the County civil authorities. Compensation shall be based on actual hours of service performed.

21. TURNOVER PROCEDURE

The COUNTY has established a Turnover Procedure for return of Apple Country Public Transit vehicles and equipment at end of CONTRACT. This Turnover procedure shall be implemented toward the end of the current CONTRACT term and prior to the commencement of the new CONTRACT. At the COUNTY's option, a Turnover Inspection may be implemented with or without a change in SERVICE PROVIDER.

22. COUNTY AND SERVICE PROVIDER-SUPPLIED PROPERTY

The title to capital items provided by the COUNTY shall remain with the COUNTY.

- a. The title to capital items provided by the COUNTY shall remain with the COUNTY. The SERVICE PROVIDER shall be required to maintain such items utilizing manufacturers' recommended maintenance standards, at a minimum, or those standards provided by the COUNTY, at the COUNTY's sole discretion. Furthermore, the SERVICE PROVIDER shall maintain adequate property control records of all the COUNTY-furnished property in accordance with sound industry practice and as approved by the COUNTY.
- b. The COUNTY shall have the option, upon the expiration or termination of the CONTRACT, to purchase all or any part of non-revenue equipment not already purchased by the COUNTY and used by the SERVICE PROVIDER in the performance of the work specified in the CONTRACT at a price equal to that portion of the original cost of the equipment which has not yet been amortized as of the date the CONTRACT expires or is terminated. Amortization shall be deemed to be made in accordance with generally accepted accounting principles.

23. MEETINGS

Upon request of the COUNTY, the SERVICE PROVIDER shall, at its own expense, attend public, committee, or board meetings to provide information concerning the transit system. A representative of the SERVICE PROVIDER shall attend, at a minimum, bi-weekly meetings or as requested with the COUNTY Transit staff at times and locations to be determined.

24. REMOVAL OF EMPLOYEES.

Promptly upon the written demand of the COUNTY's Project Coordinator, SERVICE PROVIDER shall remove from activities associated with this CONTRACT any employees whom the COUNTY at its sole discretion considers unsuitable for such work.

25. APPROVAL OF PROCEDURES.

The plans submitted in response to this Request for Proposals are hereby incorporated into this CONTRACT by reference. These plans, together with the requirements in the Request for Proposals, shall constitute the SERVICE PROVIDER's operating procedures, policies and practices, and, upon reasonable written request from the COUNTY, the SERVICE PROVIDER shall amend such procedures, policies and practices in accordance therewith. The SERVICE PROVIDER shall request the COUNTY's prior written approval for any change to these plans. Such procedures, policies and practices shall be deemed to include all operators' and other SERVICE PROVIDER's employees' training and orientation and SERVICE PROVIDER's employee performance codes and disciplinary procedures, dress codes, run cuts, timetables and other performance-related procedures or policies.

26. ADVERTISING.

At this time, the COUNTY does not permit paid interior or exterior advertising on Apple Country Transit buses. However, the COUNTY shall have the right to determine interior and exterior advertising policies on revenue vehicles. All revenue received from advertising on buses shall be paid to the COUNTY. The SERVICE PROVIDER shall be responsible for the

installation of advertising in the buses.

27. ERISA

The SERVICE PROVIDER shall comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended with respect to each of its employee benefit plans. The SERVICE PROVIDER shall supply the COUNTY with such information concerning the status of each of the SERVICE PROVIDER's employee benefit plans, as the COUNTY shall reasonably request.

28. LICENSES, PERMITS, AND FILING FEES

The SERVICE PROVIDER is solely responsible for obtaining any licenses or other authorization required by law to perform the services required in this CONTRACT.

- a. The cost of all licenses and permits necessary to operate each bus and other equipment under all such applicable laws and regulation shall be the responsibility of the SERVICE PROVIDER. These permits and licenses shall include, but not limited to, all necessary North Carolina motor vehicle licenses and certificates.
- b. The SERVICE PROVIDER shall pay all federal, state, and local taxes imposed on the SERVICE PROVIDER by reason of the ownership or leasing of any vehicle, equipment, purchase of fuel, inventory or operation of the transit system.

29. PROHIBITED USES

Unless expressly authorized in writing by the COUNTY, the SERVICE PROVIDER shall not use any bus or other equipment, which is part of the Apple Country Transit service other than in connection with the services required to be performed under the CONTRACT. The SERVICE PROVIDER shall not use any such bus or other equipment for any private charters or any purpose other than as may be specifically permitted by the COUNTY and in the COUNTY's sole discretion and under such terms as the COUNTY elects.

Should a state of emergency be declared by the COUNTY, or the State of North Carolina, use of any bus or equipment for said state of emergency must be approved prior to use by the COUNTY.

30. RISK OF LOSS OR DAMAGE

- a. The SERVICE PROVIDER shall be responsible for the vehicles, equipment and supplies used in the performance of the services called for under the CONTRACT and shall be responsible for all loss or damage with respect to any such vehicles, equipment, and supplies, excepting those losses or damages due to either intentional acts of the COUNTY or the COUNTY's gross negligence.
- b. The SERVICE PROVIDER will be responsible for all losses and/or damages to buildings, structures, and facilities, whether owned or leased by the COUNTY, used in the performance of this CONTRACT, which are due to the negligence of the SERVICE PROVIDER, its agents, representatives, employees, or subcontractors.

31. INSURANCE

The SERVICE PROVIDER shall procure and maintain, or cause others to procure and maintain, for the duration of the CONTRACT insurance against claims against the County

for injuries to persons or damages to property, or theft which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, employees, subcontractors or authorized the COUNTY transit staff, including but not limited to the procuring of insurance against claims for injuries to persons or damages to property including claims that may arise at the COUNTY owned or leased transfer centers, park and ride lots or bus stops, or theft, or property damage of any and all transit vehicles and equipment either owned by the COUNTY, or leased by the COUNTY, or otherwise used by the SERVICE PROVIDER or the COUNTY in connection with the operation of the transit system and the services described in the CONTRACT. The cost of such insurance shall be identifiable as separate items and included in the SERVICE PROVIDER's Cost Proposal:

a. Minimum Limits of Insurance

SERVICE PROVIDER shall maintain limits no less than:

1. General Liability including Garage Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Subject to Policy aggregate limit of \$2,000,000.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury, personal injury, and property damage including passenger liability.
3. Umbrella Liability: \$10,000,000 per occurrence for bodily injury, personal injury, and property damage in excess of limits required under "1" and "2" above and "4" below.
4. Workers' Compensation and Employers Liability: Workers Compensation limits as required by the Labor Code of the State of North Carolina and Employers Liability limits of \$1,000,000 per accident.
5. All Risk Fire and Extended Coverage for full replacement cost on all equipment, tools, supplies, and contents used in the performance of services under the CONTRACT. The COUNTY (and the City of Asheville) as their interest may appear will be included as Loss Payees in this coverage for Apple Country Transit – owned equipment, tools, supplies, and contents.
6. Automobile Physical Damage coverage, including Collision coverage and Comprehensive coverage, each equal to actual cash value of all vehicles, including the fixed route buses, paratransit vans, and nonrevenue vehicles operated by SERVICE PROVIDER's employees. Deductible levels shall be determined by the SERVICE PROVIDER based upon SERVICE PROVIDER'S ability to cover deductible payments in the event of a claim. The SERVICE PROVIDER shall be responsible for all damages falling below the deductible. No blanket or per location limit should apply to this coverage under \$10,000,000. The COUNTY will be included as a Loss Payee in this coverage.
7. Employment Practice Liability: \$1,000,000 each occurrence and aggregate.

b. Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the deductibles or self-insured retentions as respects the COUNTY, the Board of Directors, their officials, agents, employees, and volunteers; or the SERVICE PROVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:
General Liability, Automobile Liability, and Umbrella Liability Coverage

1. The COUNTY, its officials, agents, employees, and volunteers shall be covered as insured with respect to liability arising out of activities performed by or on behalf of the SERVICE PROVIDER; products and completed operations of the SERVICE PROVIDER; premises owned, occupied, or used by the SERVICE PROVIDER; or vehicles owned, leased, hired or borrowed by the SERVICE PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officials, agents, employees, and volunteers.
2. The SERVICE PROVIDER's insurance coverage shall be primary insurance with respect to the COUNTY, its officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officials, agents, employees, and volunteers shall be in excess of the SERVICE PROVIDER's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees, and volunteers.
4. The SERVICE PROVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the COUNTY, its officers, officials, employees, and volunteers for losses arising from work performed by the SERVICE PROVIDER for the COUNTY.

All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the COUNTY.

d. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A VII or

acceptable to the COUNTY.

e. Verification of Coverage

The SERVICE PROVIDER shall furnish the COUNTY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The policies, certificates and endorsements are to be in a form acceptable to the COUNTY and are to be received and approved by the COUNTY 30 days after award or commencement of any mobilization activity, whichever is earlier. The SERVICE PROVIDER is to commence no activity with regard to performance of the CONTRACT until the required insurance has been obtained. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, at anytime.

f. Subcontractors

The SERVICE PROVIDER shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

g. Rights Reserved

The COUNTY reserves the right to reject any and all insurance proposals, to waive any informality in PROPOSALS and, unless otherwise specified by the PROPOSER, to accept any item in the PROPOSAL. The COUNTY, solely at its option, may purchase any or all of the insurance coverage required in these specifications directly to cover its own and the SERVICE PROVIDER's interests, in lieu of the SERVICE PROVIDER providing such coverage. In such cases, the COUNTY would delete applicable insurance coverage and cost(s) from its evaluation of PROPOSALS.

h. Claims Information and Loss Runs

The SERVICE PROVIDER shall make available to the COUNTY, through its records or the records of their insurer, information regarding a specific claim. Any loss run information available from the SERVICE PROVIDER or their insurer will be made available to the COUNTY upon their request.

32. LABOR DISPUTES

If the SERVICE PROVIDER has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this CONTRACT, the SERVICE PROVIDER immediately shall give notice, including all relevant information, to the COUNTY Project Coordinator.

33. MINIMUM BUS AVAILABILITY

The SERVICE PROVIDER shall provide a number of vehicles that equal that of the peak service requirement for both the fixed route and paratransit service in operable condition for revenue service in peak periods unless otherwise directed by the COUNTY. No vehicle shall be inoperable for a period longer than 5 business days unless by express written permission by the COUNTY.

34. CONFIDENTIALITY

All reports, information or data of whatever nature provided to, or prepared, generated or

assembled by the SERVICE PROVIDER in connection with the performance of the CONTRACT shall not be made available to any individual or organization outside the SERVICE PROVIDER without the prior written approval of the COUNTY, unless such is required by a court process. SERVICE PROVIDER shall promptly notify the COUNTY of any request for such information in a court proceeding.

35. EXAMINATION AND RETENTION OF RECORDS

SERVICE PROVIDER shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to work performed for the COUNTY under this CONTRACT on file for at least three (3) years following the date of final payment to the SERVICE PROVIDER by the COUNTY. All records stored on a computer database must be of an updated format compatible with the COUNTY's software systems. Any duly authorized representative(s) of the COUNTY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during SERVICE PROVIDER's usual and customary business hours. SERVICE PROVIDER shall provide proper facilities to the COUNTY representative(s) for such access and inspection. Further, any duly authorized representative(s) of the COUNTY shall be permitted to observe and inspect any or all of SERVICE PROVIDER's facilities and activities during SERVICE PROVIDER's usual and customary business hours for the purposes of evaluating and judging the nature and extent of SERVICE PROVIDER's compliance with the provision of this CONTRACT. In such instances, the COUNTY representative(s) shall not interfere with or disrupt such activities.

The SERVICE PROVIDER shall maintain, and the COUNTY and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the CONTRACT. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the COUNTY office of the SERVICE PROVIDER within 3 days of COUNTY request for inspection, audit, and reproduction during the term of the CONTRACT, and for three years from the final date of settlement or payment under the CONTRACT.

36. SEVERABILITY OF PROVISIONS

Any provision of the CONTRACT, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of the CONTRACT or affecting the validity or enforceability of such provisions in any other jurisdiction.

37. FEDERAL REGULATIONS AND REQUIREMENTS

The SERVICE PROVIDER will comply or implement programs meeting regulations and requirements of the Federal Government. These requirements include:

National Transit Database

The SERVICE PROVIDER will submit to the COUNTY (monthly) information pertaining to the NTD requirements (Section 4).

Should FTA request revisions or explanations for any portion of the annual NTD report, SERVICE PROVIDER will provide data for follow-up report in a timely manner – at least

five (5) days prior to FTA deadline. If data is not provided within 5 days of the COUNTY's request or is inaccurate, SERVICE PROVIDER will reimburse the COUNTY for any costs associated with compiling the data.

Disadvantaged Business Enterprise Program

The SERVICE PROVIDER or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The SERVICE PROVIDER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted CONTRACTS. Failure by the SERVICE PROVIDER to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy, as the recipient deems appropriate.

The COUNTY has specified a DBE goal of seven percent (7%) for the work to be performed under this CONTRACT. The SERVICE PROVIDER must make good faith efforts to meet this goal throughout the CONTRACT.

Drug and Alcohol Testing

The SERVICE PROVIDER agrees to establish and implement a Drug and Alcohol Testing Program that complies with 49 CFR Parts 653 and 654 and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the COUNTY, to inspect the facilities and records associated with the implementation of the Drug and Alcohol Testing Program as required under 49 CFR Parts 653 and 654 and review the testing process. The SERVICE PROVIDER agrees further to certify annually its compliance with Parts 653 and 654 before December 31st of every year and to submit the Management Information System (MIS) reports not later than February 15th of every year to the COUNTY. To certify compliance, the SERVICE PROVIDER shall use the Substance Abuse Certifications in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, which is published annually in the Federal Register.

Additional Federal Requirements

Appendix A outlines additional Federal Transit Administration requirements pertaining to this CONTRACT. These clauses are incorporated into this CONTRACT with the same force and effect as if they were included in the main text of the CONTRACT.

It is understood and agreed that the SERVICE PROVIDER may be obligated by and to the COUNTY for any specifications or documentation required of the COUNTY under these clauses.

38. PERFORMANCE STANDARDS

The SERVICE PROVIDER will perform all transit services required by the CONTRACT according to the performance standards set forth below. The SERVICE PROVIDER's plans and procedures, submitted with the PROPOSAL, shall incorporate actions necessary to provide service according to these standards. The performance standards shall apply to the Fixed Route, Paratransit, and the Special Events services.

The COUNTY has developed these standards with which the SERVICE PROVIDER is expected

to comply to ensure that Apple Country Transit services, employee performance and vehicles meet the COUNTY standards. Failure by the SERVICE PROVIDER to meet these standards could result in the COUNTY assessing an appropriate liquidated damage amount for each incident of non-compliance. The COUNTY has established specific performance standards related to the following:

- Title VI Requirements
- Vehicle Maintenance
- Operating Requirements
- Vehicle Cleanliness
- ADA Compliance
- Safety Reporting Requirements

Title VI Requirements

Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, and national origin, including the denial of meaningful access for limited English proficient (LEP) persons. In accordance with 49 CFR Section 21.7(a), the COUNTY and the SERVICE PROVIDER must carry out the program in compliance with DOT's Title VI regulations.

The SERVICE PROVIDER will not violate the COUNTY'S Title VI policy. The SERVICE PROVIDER will assist any rider in their right to make a Title VI complaint according to the COUNTY'S Title VI policy found on the COUNTY'S website.

Vehicle Maintenance Standards

Proper maintenance directly affects operating costs and is closely related to the COUNTY's operating performance standards. The COUNTY maintenance requirements do not refer solely to the task of performing normal preventive maintenance tasks on a specified schedule, but rather that the task is done well and that the operation of the bus and all equipment on board the bus is in fact operable and reliable when in-service. The SERVICE PROVIDER is responsible for performing the following maintenance on a bus-by-bus basis (fixed route and paratransit buses):

- a. Completing all preventive maintenance inspections within the scheduled interval.
- b. Maintaining the heating systems: The heating systems must be fully operable from November 1 to March 1.
- c. Maintaining the air conditioning systems: The air conditioning system must be fully operable from March 1 to November 1.
- d. Repairing major vehicle body damage (interior or exterior) within twenty-one (21) days of occurrence.
- e. Repairing minor vehicle body damage (interior or exterior) such as scratches or damaged decals within thirty (30) days of occurrence;
- f. Replacing or repairing seat damage within forty-eight (48) hours of occurrence; and,
- g. Repairing ADA required equipment within forty-eight (48) hours of occurrence.

This equipment includes:

- Public address (PA) system
- Destination sign
- Stop Request signs
- Passenger signal tape or buttons
- Wheelchair lift equipment
- Wheelchair tie-down and securement equipment; and
- Required ADA signage and decals

Ensuring that all buses placed in revenue service meet safety standards. This includes the following systems:

- brakes
- steering components
- air conditioning in the period March 1 through November 1
- heating in the period November 1 through March 1
- emergency exits/doors/windows
- two-way radios
- all conditions required by Federal or State regulations

Operating Standards

The SERVICE PROVIDER shall make every effort to cover scheduled service. The SERVICE PROVIDER is responsible for complying with the following requirements:

The following performance requirements apply to the Fixed Route Bus Operations:

- a. Maintaining on-time performance within zero (0) minutes early and five (5) minutes late of scheduled times, except for in cases of inclement weather or other uncontrollable circumstances.
- b. Completing scheduled trips in their entirety.
- c. Operating routes in accordance with the established routes (operating according to the correct route, serving all designated stops).

The following performance requirements are used in defining operating requirements for Paratransit bus services:

- a. Achieving a level of on-time performance equaling or exceeding ninety five percent (95%) of pick-ups within sixty (60) minutes of the scheduled pick- up time.
- b. Notifying applicants about their eligibility for paratransit service within twenty-one (21) days of receipt of their application.
- c. Maintaining written daily logs, reported by month, which detail telephone communications from registered and potential new clients as per ADA requirements.

Vehicle Cleanliness

The SERVICE PROVIDER shall maintain Apple Country Transit vehicles in a clean and neat condition, at all times. The SERVICE PROVIDER is responsible for the following:

- a. Daily cleaning of the interior of the vehicles
- b. Regular cleaning of the exterior of the vehicles (washing and or spraying dirt off of vehicles every two days)
- c. Major detailed interior cleaning every fourteen (14) days
- d. Quarterly upholstery cleaning

ADA Compliance

The SERVICE PROVIDER shall meet the ADA requirements. The SERVICE PROVIDER is responsible for the following:

- a. The use of mobility devices to board passengers;
- b. Properly boarding passengers who are required to stand on the wheelchair lift platform to be lifted into the bus;
- c. Properly securing wheelchair passengers in the wheelchair tie-down positions;
- d. Making the required announcements of stops on the bus PA system;
- e. Daily Testing light,
- f. No bus may depart from maintenance facility without operational lights

Safety Requirements

The SERVICE PROVIDER is responsible for complying with all of the following:

Reporting all passenger or vehicle accidents to the COUNTY promptly within one (1) hour of occurrence and following up with required detailed written accident report within three (3) to five (5) days.

Reporting

Submitting required monthly reports and documentation within ten (10) working days of the end of the month.

Customer Service

Completing investigation and follow-up response on customer complaints within seven (7) working days of complaint receipt. This includes assisting riders in making Title VI complaints according to COUNTY policy.

39. REQUIRED REPORTS

The following reports are to be submitted to the COUNTY according to the specified frequency:

- a. Maintenance Reports
 - i. The requirements for Maintenance Reports are outlined in the Request for Proposals dated December 1, 2021.

b. Operations Reports

i. Fixed Route Services

1. Daily Dispatch Log: The service provider will record on a daily dispatch log all radio communication received from operators, supervisors and safety and including time, vehicle number, route number and a brief summary of any incident.
2. Daily Operating Report
 - a. Total runs dispatched
 - b. Total revenue hours operated
 - c. Total dispatched runs and revenue hours that were missed
 - d. Total dispatched runs that were delayed
 - e. Total number of trips monitored by Service Provider
 - f. Total monitored trips recorded as late or early
 - g. Total number of authorized extra trips
 - h. Accidents involving any Apple Country Public Transit vehicle or passenger
 - i. Total number of bus failures (identified as major or minor) by bus and run number
 - j. Total number of buses (in service) with inoperable wheelchair lifts identified by bus number
 - k. Farebox problem, tampering, vandalism etc. by bus number
 - l. List of supervisors driving routes and run number
 - m. Number of dispatchers and supervisors on duty (not driving)
 - n. Number of open runs (DRIVER's) and run number
3. Monthly Apple Country Public Transit Service Reports
 - a. Total number of major and minor mechanical failures by bus number and run number
 - b. Total miles between failures
 - c. Mileage per month
 - d. Total missed trips and hours
 - e. Total supervisor hours driving routes
 - f. Completed NTD Report (National Transit Database – may include other specifics for Henderson County as needed)
4. Quarterly Route Evaluation Report
 - a. SERVICE PROVIDER shall develop and submit to the COUNTY within 30 days of the Contract start date, a checklist for a quarterly Route Evaluation Report that summarizes the state of good repair for bus stops, shelters, and signage, as well as any observations of opportunities to improve service route and bus stop locations.
 - b. SERVICE PROVIDER shall submit the Route Evaluation Report on a quarterly basis to the COUNTY.

- c. In addition to the quarterly Route Evaluation Report, SERVICE PROVIDER shall report any observations of opportunities to improve service route and bus stop locations to the COUNTY through regular communications.
 - c. Safety Reports
 - i. Monthly Drug and Alcohol Testing Information

Number of tests administered by personnel category and all positive and negative results for the following categories:

 - a. Pre-employment
 - b. Post-Accident
 - c. Random
 - d. Reasonable Suspicion
 - ii. Monthly Accident Statistics
 - a. Preventable and Non-preventable
 - b. Passenger Injuries
 - c. New Workers Comp Injuries, and Injuries per 100 employees
 - d. Incidents
 - iii. Accident Reporting

Dispatch Memorandum of Accident (including drug & alcohol testing requirements)

 - a. Supervisors Accident Report
 - b. Drivers Accident Report
 - c. Police Report
 - d. Safety Department Follow up Report
 - e. Drivers MVR checks every six (6) months
 - iv. Driver Motor Vehicle Records Reports

Comprehensive check of all driver MVR reports every six months.
- d. Revenue Reports
 - i. Daily Reconciliation Report
 - a. Ticket Sales
 - a. Consignment Revenue
 - b. Advertising
 - c. Cash
 - d. Total Revenue
 - e. Total Deposit
 - ii. Diamond Farebox Reports (when available on new buses)
 - a. Daily Revenue and Ridership Report
 - b. Daily Farebox Data Verification Report (discrepancies)
 - c. Daily Exception Report
 - d. Daily Security Report
 - e. Monthly Revenue and Ridership Report

- e. Customer Service Monthly Reports
 - i. Complaints/Commendations/Observations
 - 1. Copy of each complaint and commendation
 - 2. Summary of investigations and follow-up actions
 - 3. Drivers' observations of opportunities for service improvement
- f. Personnel Reports
 - i. Total Positions by Department and Classification – Required, Filled, and Vacant
 - ii. Number of Employees in Training (by Department)
- g. COUNTY Notification – Within 30 Minutes of Occurrence
 - i. The SERVICE PROVIDER shall develop and submit to the COUNTY a communications protocol for notifying the COUNTY of the following events:
 - 1. Accidents (any the COUNTY vehicle or passenger)
 - 2. Incidents that delays route more than 10 minutes
 - 3. Missed trips
 - 4. Major bus failure (any disabled bus)
 - 5. Detour or deviation off normal routes, this includes deadhead routes
 - 6. Temporary interruption of service due to emergency; other weather-related emergencies require notification of County prior to suspension of service.

40. DISCLAIMERS AND WAIVERS.

This Agreement is to be regarded as an agreement for the purposes described in the Preamble clauses and provisions herein. It is the responsibility of each party to seek independent professional advice, to review, and to negotiate any changes prior to execution of this Agreement. County hereby disclaims the use of any contract interpretation principles against it as the drafter of this Agreement, and the Service Provider hereby waives any and all use of said principles in any dispute or action based on the terms of this Agreement.

41. BINDING AGREEMENT

The parties agree that this Agreement is binding on their heirs, assigns, transferees, or successors in obligation or interest, except that, to the extent that performance requires the qualifications set forth above, and if the heirs, assigns, transferees, or successors do not possess such qualifications, then specific performance shall not be required, however all other remedies shall remain in full force and effect.

42. ENTIRE AGREEMENT

This Agreement contains the full, final, and exclusive statement of the Agreement between the parties and cannot be amended, altered, or changed except by a written instrument signed by the parties hereto.

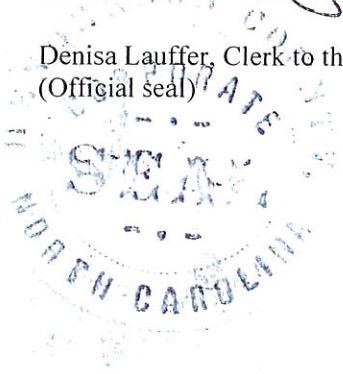
IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

On this the 18th day of May, 2022

Attest:



Denisa Lauffer, Clerk to the Board
(Official seal)



HENDERSON COUNTY

By: _____

John Mitchell
Henderson County Manager

SERVICE PROVIDER

By: _____

David White
CEO, WNC Source

STATE OF NORTH CAROLINA
COUNTY OF _____

I, Notary Public of the County and State aforesaid certify that JoAnne Hinson, personally came before me this day and acknowledged that she is the Deputy Clerk to the Henderson County Board of Commissioners, a corporation and body politic, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by the Board of Commissioner's Chairman and attested by herself as its Clerk.

WITNESS my hand and notarial seal this _____ day of _____, 2022.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, Notary Public of the County and State aforesaid certify that David White personally came before me this day and acknowledged that he is the Executive Director of Western Carolina Community Action (WCCA), Inc. a lawful corporation under the regulations of North Carolina, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by himself as its Executive Director.

WITNESS my hand and notarial seal this _____ day of _____, 2022.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act N.C.G.S. 159-28(a)

By: *Samantha Reynolds*
Samantha Reynolds
County Finance Director

Date: *5.6.2022*

Attachment One

WNC Source Proposed Annual Costs and Hourly Rates for Fixed Route Transit (Best and Final Offer dated March 10, 2022)

	Year 1 FY 2023	Year 2 FY 2024	Year 3 FY2025	Option Year 4 FY 2026	Option Year 5 FY 2027	Option Year 6 FY 2028
Not to Exceed Annual Cost	\$601,841	\$625,089	\$649,324	\$674,726	\$701,293	\$729,031
Service Hours	8,976	8,976	8,976	8,976	8,976	8,976
Hourly Rate	\$67.05	\$69.64	\$72.34	\$75.17	\$78.13	\$81.22

WNC Source Proposed Annual Costs and Hourly Rates for Paratransit Program (Best and Final Offer dated March 10, 2022)

	Year 1 FY 2023	Year 2 FY 2024	Year 3 FY2025	Option Year 4 FY 2026	Option Year 5 FY 2027	Option Year 6 FY 2028
Not to Exceed Annual Cost	\$75,620	\$78,810	\$82,150	\$85,630	\$89,280	\$93,100
Service Hours	1,000	1,000	1,000	1,000	1,000	1,000
Hourly Rate	\$75.62	\$78.81	\$82.15	\$85.63	\$89.28	\$93.10

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

SUBGRANT AGREEMENT

This Agreement is entered into between the County of Henderson, a body corporate and politic of the State of North Carolina (the "County") and Conserving Carolina, a North Carolina non-profit corporation ("Conserving Carolina").

Background

- A. North Carolina's budget for fiscal year 2021-22 (North Carolina Session Law 2021-180) provides for "the Bat Fork stream restoration and flood resilience project" (the "Project"), and allocates to the County the sum of \$950,000 (the "Allocation") for the same.
- B. North Carolina and the County have entered into an agreement (North Carolina Department of Public Safety agreement #HENDERSONCO BATFORK 2021-2023, hereafter the "DPS Agreement", which is attached hereto and incorporated herein by reference) in furtherance of the Project and the Allocation.
- C. The parties acknowledge that the Allocation is all of the funding to be provided for the Project, and that Conserving Carolina will receive 97.5% of the Allocation for the Project, and that the County will be entitled to the remaining 2.5% for administering the Project under this Subgrant Agreement.
- D. This Subgrant Agreement (the "Agreement") is done in furtherance of the Project and the Allocation.
- E. Both parties acknowledge and understand that DPS Agreement as received from the North Carolina Department of Public Safety contains neither "Attachment A" nor "Attachment B" referred to in the DPS Agreement.

Agreement

- 1. Conserving Carolina shall provide and/or provide for the provision of all the services covered by the DPS Agreement. These services shall specifically accomplish the Project as provided in Attachment A of the DPS Agreement, and as further provided in Exhibit 1 to this Agreement.
- 2. Conserving Carolina shall provide to the County all the documentation provided for the DPS Agreement, as follows:
 - A. W-9/Electronic Payment/Vendor Verification form.
 - B. Conflict of interest statement pursuant to N.C. Gen. Stat. §143C-6-23(b).

C. No Overdue Tax Debt Certification pursuant to N.C. Gen. Stat. §143C-6-23(c).

3. Conserving Carolina shall provide to the County at least monthly verified documentation of all expenditures of time and money for the Project, including but not limited to the following:

A. All documentation required of a “subgrantee” pursuant to N.C. Gen. Stat. §143C-6-23 and regulations adopted thereunder.

B. All documentation needed for the County to be deemed (by the North Carolina Department of Public Safety, and any other department or subdivision of the State of North Carolina exercising oversight over the DPS Agreement) to be in compliance with the provisions of the DPS Agreement and the Allocation, including those required in paragraph 3 of the DPS Agreement.

C. Full and complete documentation of all expenditures made pursuant to this Agreement in such month.

4. The County will receive the quarterly payments referred to in paragraph 2 (subparagraph entitled “Agency’s Duties & Payment Provisions”) of the DPS Agreement, and shall make the following payments to Conserving Carolina:

A. Monthly reimbursement to Conserving Carolina of their expenditures reflected in the documentation required in 3., above, up to a total amount of \$237,500 per calendar quarter in each the first three quarters after the first payment to the County under the DPS Agreement, and up to a total amount of \$213,750 in the fourth (and final) quarter.

B. Under no circumstances shall total payments to Conserving Carolina under this Agreement exceed 97.5% of the payments made to the County from the Allocation under the DPS Agreement.

5. The County shall retain an administration fee of two and one-half percent (2½%) of the Allocation.

6. Fund management by Conserving Carolina shall be as stated in paragraph 4 of the DPS Agreement.

7. Conserving Carolina agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of Conserving Carolina are subject to being audited, inspected and monitored at any time by the County and North Carolina upon request (whether in writing or otherwise). Conserving Carolina further agrees to provide County and North Carolina Department of Public Safety staff, and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements. Conserving Carolina acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C. Gen. Stat. §159-34, and all rules and regulations adopted thereunder. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by Conserving Carolina and are subject to change.

8. The County and Conserving Carolina together incorporate by reference paragraphs 7 through 14 of the DPS Agreement herein by reference, and further agree that they Conserving Carolina will comply with all provisions contained therein as duties or responsibilities of "RECIPIENT".

9. To the extent that they apply to this transaction, and to the extent they are not directly contradicted by the provisions hereof, this transaction shall be performed in accordance and compliance with the County's standard Terms and Conditions, Exhibit 2 hereto, which is incorporated herein by reference.

10. Conserving Carolina shall indemnify the County and hold it harmless, including reasonable attorneys' fees, from any liability under the DPS Agreement for any failure to comply with the terms hereof.

11. The term and expiry of this Agreement shall coincide with that of the DPS Agreement.

The parties have executed the same, the date and year appearing next to the signature of their duly and expressly authorized agent, below.

COUNTY OF HENDERSON

By: 
JOHN MITCHELL
County Manager

Date: 5/19/22

CONSERVING CAROLINA


Kieran Roe (May 11, 2022 17:52 EDT)
By: _____
KIERAN ROE
Executive Director

May 11, 2022
Date: _____

EXHIBIT 1

Pleasant Grove Area Property Restoration Scope of Work

Conserving Carolina will oversee design, permitting and implementation of stream, wetland and floodplain restoration on three tracts along the French Broad River in the Pleasant Grove community of Etowah.

Restoration practices will include:

- Wetland restoration, preservation, and enhancement,
- Stream restoration, preservation, and enhancement,
- Aquatic habitat restoration,
- Native riparian and floodplain buffer planting,
- Invasive plant control and removal,
- Selective floodplain berm removal to promote floodplain access and flood water storage, and
- Streambank stabilization.

Deliverables:

1. Develop Preliminary Restoration Design Plans based on Ecological Objectives and Property Constraints
2. Develop 60% Engineering Design Plans for Permitting
3. Develop Hydraulic Model Flood Studies for No-Rise/No-Impact Floodplain Permits
4. Submit Applications for USACE/DWR 401/404, NCDEMLR ESC Plan, NCDEQ Stormwater, and Henderson County Floodplain Permits
5. Develop 100% Construction Drawings Following Permit Approvals
6. Implement Restoration Construction and Plantings in Compliance with Permit Conditions
7. Obtain Conservation Easements on the Three Restoration Sites
8. Design and Construct Sustainable Recreational Trails
9. Provide Quarterly Programmatic and Financial Reports to the County

Project Budget:

Expense	
Design and Engineering	\$90,000
Permitting	\$60,000
Construction	\$610,000
Vegetation and Plantings	\$45,000
Trail/River Access Design and Construction	\$30,000
Educational Signage	\$5,000
Long-Term Conservation	\$60,000
Project Management	\$75,000
County Administration Fee	\$25,000
Total Expense	\$1,000,000

North Carolina Department of Public Safety

Agreement #HENDERSONCO 2021-2023

This Agreement is hereby entered into by and between the Department of Public Safety (the "AGENCY") and the Henderson County (the "RECIPIENT") (referred to collectively as the "Parties"). The RECIPIENT's federal tax identification number is 566000307.

1. EFFECTIVE TERM

This agreement shall be effective starting November 18, 2021 and this agreement shall terminate on June 30, 2023.

2. RECIPIENT'S DUTIES

The RECIPIENT shall provide the services as described below:

The RECIPIENT is authorized to use funds by this agreement for flood resilience project on the French Broad River at Pleasant Grove as directed by the NC General Assembly in Session law 2021-180 (House Bill-105).

The RECIPIENT's scope of work is a complete and concise scope of goods or services supported by this agreement and consistent with language in Session Law 2021-180. See Attachment A.

The RECIPIENT agrees to use the funds in the amounts allocated for the budget cost items set forth in the RECIPIENT's Budget. RECIPIENT may reallocate and/or redistribute among budgeted items up to 10% in overall budget costs without the express written permission of the AGENCY. RECIPIENT agrees that it will not reallocate and/or redistribute any overall budget costs that will exceed 10% on any annual basis without first obtaining the express authorization of the AGENCY in writing.

The RECIPIENT understands and acknowledges that total funding level available under this agreement will not exceed \$1,000,000. Attachment A provides scope of work and payment amounts to be paid to RECIPIENT. RECIPIENT agrees to complete all sections of the Quarterly or Periodic Status Report & Accounting (Attachment B) following each quarter, and provide all supporting documentation when the quarterly Accounting is submitted.

The RECIPIENT shall provide the following forms: W-9/Electronic Payment/Vendor Verification form (09 NCAC 03M.002), Conflict of Interest Statement (N.C.G.S. 143C- 6-23.(b)), and No Overdue Tax Debt Certification (N.C.G.S. 143C-6-23.(c)) to the Agency.

Pursuant to N.C.G.S 143C-6-8, the RECIPIENT understands and agrees that agreement funding shall be subject to the availability of appropriated funds. However, in the event of agreement termination due to lack of adequate appropriated funds, the AGENCY will ensure that it will pay for services and goods acquired and obligated on or before the notice of agreement termination.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only (S.L. 2021-180, Sec. 5.2 (b)5). State funds for any one employee of a nonprofit are capped at \$120,000.00 (S.L. 2021-180, Sec. 5.3). Funds shall not revert until June 30, 2023 (S.L. 2021-180, Sec. 5.2).

The RECIPIENT understands and acknowledges required compliance with all statutory provisions outlined in N.C.G.S. 143C-6-22 Use of State funds by non-State, and 09 NCAC 03M .0205, Minimum reporting requirement recipient and subrecipient.

AGENCY'S DUTIES & PAYMENT PROVISIONS

The AGENCY shall ensure that funds allocated and disbursed pursuant to Session Law 2021-180, comply with the intent and guidance found in this Session Law and ensure compliance with related state statutes and financial management standards.

The AGENCY shall pay the RECIPIENT a total not to exceed \$1,000,000. The appropriation shall be distributed on a quarterly basis from North Carolina General Fund for \$250,000 and submit to the AGENCY, along with all required documentation. Once the AGENCY is satisfied that the RECIPIENT has provided all the required documentation, the requested distributions can be processed for payment. The distributions of funds will be coded to 536G08 2E50-1175.

3. QUARTERLY STATUS REPORTING

The RECIPIENT agrees to provide quarterly, or 90-day project status reports to be sent electronically from the RECIPIENT to the AGENCY and shall at a minimum include:

- a. Period stating beginning balance of the Project Fund.
 - i. Total expenses disbursed (aggregate totals) by the following project uses:
 - a. Employee Expenses (e.g program related staffing).
 - b. Service and Contract expenses (e.g. utilities, telephone, data, lease related expenses).
 - c. Goods (e.g. supplies and equipment) expenses.
 - d. Administration Expenses (e.g overhead & project management).
 - e. Other expenses (e.g. related charges not assigned above and described by recipient).
 - ii. Period ending balance of the RECIPIENT funding disbursed pursuant to this agreement.
 - iii. A descriptive summary of how the funds were used including outcomes and specific deliverables or accomplishments to date

ATTACHMENT B is a copy of the quarterly status tracking report.

- b. Quarterly project status reports shall be emailed to Nancy Gemma; nancy.gemma@ncdps.gov

4. FUNDS MANAGEMENT

The RECIPIENT agrees that funds paid through this contract shall be accounted for in a separate fund and accounting structure within the RECIPIENT's central accounting and grant management system. The RECIPIENT agrees to manage all accounts payable disbursements, check register disbursements and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with this funding allocations described in Section 3 above. Expenditures for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be eligible under this Contract. If eligible, the Recipient and all subrecipients shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their quarterly project status reports.

5. AGREEMENT ADMINISTRATORS

All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Agreement Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Agreement Administrators are set out below. Either Party may change the name, post office

address, street address, telephone number, fax number, or email address of its Agreement Administrator by giving timely written notice to the other Party.

For the AGENCY	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Tara Williams-Brown, Controller NC Department of Public Safety 4220 Mail Service Center Raleigh, NC 27699-4220 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov	Tara Williams-Brown, Controller NC Department of Public Safety 2020 Yonkers Road Raleigh, NC 27604 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov

For the RECIPIENT	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov	Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov

6. MONITORING AND AUDITING

The RECIPIENT acknowledges and agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of the RECIPIENT are subject to being audited, inspected and monitored at any time by the AGENCY upon its request (whether in writing or otherwise). The RECIPIENT further agrees to provide AGENCY staff and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements.

The RECIPIENT acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C.G.S. 159-34, Local Government Finance Act – Annual Independent Audit, rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by the RECIPIENT and are subject to change.

7. TAXES

The RECIPIENT shall be considered to be an independent RECIPIENT and as such shall be responsible for all taxes. The RECIPIENT agrees to provide the AGENCY with the RECIPIENT'S correct taxpayer identification number upon the execution of this Agreement. The RECIPIENT agrees that failure to provide the AGENCY with a correct taxpayer identification number authorizes the AGENCY to withhold any amount due and payable under this Agreement.

8. SITUS

This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement of this Agreement shall be filed in State court in Wake County, North Carolina.

9. SUBCONTRACTING AND ASSIGNMENT

The RECIPIENT agrees that by assigning or subcontracting any work related to the contract to a subcontractor or SUB-RECIPIENT, that such entities shall comply with the following:

- (a) The RECIPIENT or SUB-RECIPIENT is not relieved of any of the duties and responsibilities of the original contract; and
- (b) The SUB-RECIPIENT agrees to abide by the standards contained in this contract and to shall provide all information to allow the RECIPIENT to comply with these standards.

RECIPIENT agrees that all SUB-RECIPIENTS to this agreement shall comply with the following provisions of the North Carolina Administrative Code: "09 NCAC 03M .0203 SUB-RECIPIENT RESPONSIBILITIES."

10. ADVERTISING

RECIPIENT agrees not to use the existence of this contract, the name of the AGENCY, the or the name of the State of North Carolina as part of any commercial advertising, without prior written approval of the AGENCY.

11. COMPLIANCE WITH LAW

The RECIPIENT shall remain an independent RECIPIENT and as such shall be wholly responsible for the scope of work to be performed under this Agreement and for the supervision of his employees and assistants. The RECIPIENT represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the AGENCY. The RECIPIENT shall be responsible for compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of his business and work performance under this Agreement, including those of Federal, State, and local agencies having appropriate jurisdiction.

The Recipient acknowledges and agrees that, in its conduct under this Contract and in connection with any and all expenditures of grant funds made by it, it shall comply with the cost principles enunciated in the Code of Federal Regulations, 2 CFR, Part 200. The Recipient further acknowledges and agrees that, if it grants any of the grant funds awarded hereunder to one or more sub-recipients or sub-sub-recipients, the Recipient shall, by contract, ensure that said cost principles are made applicable to and binding upon any and all such sub-recipients, sub-sub-recipients, etc. in their handling, use and expenditure of the funds awarded to the Recipient hereunder.

12. TERMINATION OF AGREEMENT

This agreement may be terminated by mutual consent upon sixty (60) days written notice to the other party, or as otherwise provided by law. As soon as reasonably possible following termination of this agreement, the amount of any residual unexpended funds shall be transferred to the AGENCY.

13. AMENDMENTS

This Agreement may be amended in writing which documents approval of changes by both the AGENCY and the RECIPIENT.

14. AGREEMENT CLOSE-OUT PROCESS

The RECIPIENT agrees to submit to the AGENCY a complete performance and expenditure status report (final report) within ninety (90) days after expiration of this agreement June 30, 2023:

- 1) A complete accounting of how the appropriated funds were used;
- 2) A complete performance status report; and
- 3) A Certification stating the funds were used for the purpose appropriated (AGENCY will supply template).

The above noted reports shall include RECIPIENT and SUB-RECIPIENT reporting information related to the above noted quantitative results and accomplishments. RECIPIENT and any SUB-RECIPIENTS agree that all program activity results information reported shall be subject to review and authentication as described in Paragraph 7 and RECIPIENT will provide access to work papers, receipts, invoices and reporting records, if requested by the AGENCY, as the AGENCY executes any audit internal audit responsibilities.

RECIPIENT will be deemed noncompliant if its final report is not submitted within the 90-day period stated above. Once the complete final performance and financial status report package has been received and evaluated by the AGENCY, the RECIPIENT will receive official notification of agreement close-out. The letter will inform the RECIPIENT that the AGENCY is officially closing the agreement and retaining all agreement files and related material for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.

15. AUTHORIZED SIGNATURE WARRANTY

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement. **In Witness Whereof**, the RECIPIENT and the AGENCY have executed this Agreement in duplicate originals, with one original being retained by each party.

HENDERSON COUNTY

Signature

Date

Jimmy Brissie

Director

Printed Name

Title

NC DEPARTMENT OF PUBLIC SAFETY

Signature

Date

Tara Williams-Brown

Controller

Printed Name

Title

**Henderson County
Terms and Conditions**

By acceptance of a purchase order with Henderson County, or by entering into the contract or agreement with Henderson County to which this "Terms and Conditions" is attached, the vendor to Henderson County or contractor with Henderson County (as the situation may be, hereinafter referred to as the "seller"), declares that all supplies, materials, equipment, apparatus and services furnished to Henderson County pursuant to the purchase order or contract agreement will be furnished according to the following terms and conditions, which terms and conditions shall supersede any language to the contrary in any other documentation of such purchase order or contract agreement.

- 1 **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship to Department** shown.
- 2 **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence, and bills of lading.
- 3 **PRICE:** All goods and/or services must be billed to Henderson County (County) at prices and quantities not to exceed those stated on the purchase order. All invoices, packages, shipping notices or the like affecting this order shall contain the applicable purchase order number. All prices are quoted F O B Destination unless specifically indicated otherwise.
- 4 **INVOICES:** Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
- 5 **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
- 6 **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
- 7 **TAXES:** Henderson County is NOT Sales Tax-Exempt. Prices shown on the County's purchase orders do not include tax, however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
- 8 **AGREEMENT TERMS:** Absent a negotiated contract, this purchase order is limited to the terms and conditions contained on the face and back hereof. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument. This purchase order including all contracts, references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the County and the Seller. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the County.
- 9 **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the County accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill. The packing list shall be enclosed in each box or package. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. All deliveries on this order must be in full accordance with specifications, properly identified with the purchase order number and must not exceed the quantities specified. The County shall have the right to inspect and test all items supplied under the order before making acceptance. Risk of loss and title to all goods received shall remain with the Seller until the County has made acceptance. Rejected goods shall be returned to the Seller at Seller's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the seller.
- 10 **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless the County, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
- 11 **INSURANCE:** This purchase order shall be considered a written contract and requires the County to be endorsed as additional insured for General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit/\$2,000,000 aggregate limit for bodily injury, property damage, or personal injury; (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence (if providing professional services); (c) Worker's Compensation Insurance as required by the State of North Carolina General Statutes; (d) Commercial Automobile Insurance applicable to bodily injury and property damage covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 combined single limit. Negotiated written contracts may require additional insurance coverage. A Certificate of Insurance shall be furnished prior to the commencement of services. The Certificate Holder shall be County of Henderson, Attn: Finance Dept., 113 N. Main Street, Hendersonville, NC 28792.
- 12 **APPLICABLE LAWS:** By acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the County against any loss, cost, liability, or damage by reason of seller's violation of any laws.
- 13 **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the County from entering into contracts with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- 14 **IRAN DIVESTMENT:** By acceptance of this purchase order, vendors, contractors, and/or subcontractors certify they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.59, Iran Divestment Act Certification.
- 15 **FEDERAL FUNDS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
 - A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
 - B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When federal funds are expended by Henderson County, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor. In the event vendor fails to (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation, Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.
 - C. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable).

**Henderson County
Terms and Conditions**

Equal Employment Opportunity (41 C.F.R. Part 60), Davis-Bacon Act (40 U.S.C. 3141-3148), Copeland "Anti-Kickback" Act (40 U.S.C. 3145), Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), Debarment and Suspension (Executive Orders 12549 and 12689), Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Procurement of Recovered Materials (2 C.F.R. § 200.322), and Record Retention Requirements (2 CFR § 200.324); Huawei/ZTE Ban (2 C.F.R. 200.216); Domestic Preference Clause (2 C.F.R. 200.322). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

16 FEMA PROVISIONS: The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.

- A. **Changes:** Changes or modifications to the original contract will only be allowed if the following provisions are met:
1. The change is within the scope of its grant or cooperative agreement
 2. The amount of the change has budgetary funds available
 3. The change does not fundamentally modify the project and
 4. The change is reasonable for the completion of the project
- B. **Access to Records:** The contractor agrees to provide Henderson County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcripts
- The Contractor agrees to permit any of the forgoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to work being completed under the contract.
- C. **DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA approval
- D. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- E. **No Obligation by Federal Government:** The Federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- F. **Program Fraud and False or Fraudulent or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

17 CANCELLATION: The County reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the seller to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified or for any other reason which causes the seller not to perform as agreed.

18 WARRANTY: The seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the County and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance, or payment by the County. The seller also warrants that the goods do not infringe any patent,

registered trademark or copyright and agrees to hold the County harmless in the event of any infringement or claim thereof. Additionally, seller warrants that the goods are free and clear of all liens and encumbrances and that seller has a good and marketable title to the same.

- 19 **HAZARDOUS CHEMICALS:** The seller shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements. The seller shall ensure that the County is provided an appropriate current Material Safety Data Sheets (MSDS) with or prior to the initial shipment of a hazardous chemical, and with or prior to the first shipment after the MSDS is updated.
- 20 **NON-DISCRIMINATION:** The County does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the County are expected to fully comply with the County's non-discrimination policies.
- 21 **VERBAL AGREEMENT:** The County will not be bound by any verbal agreements.
- 22 **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the seller is an independent contractor and not an agent of the County, and as such, seller, his or her agents and employees shall not be entitled to any County employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension, or retirement benefits.
- 23 **GOVERNING LAW:** All terms and conditions shall be interpreted in accordance with the laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the County of Henderson, State of North Carolina.
- 24 **PUBLIC RECORDS:** The seller acknowledges that notwithstanding any other provision to the contrary (including any statements regarding confidential information), this agreement, the confidential information and any documents, memorandum, data, reports, analyses, compilations, records, pricing and evaluation of all or any portion of the transactions contemplated by this agreement may be deemed public records and subject to disclosure, in whole or in part, pursuant to the North Carolina Public Records Law. The County will provide the seller with reasonably prompt notice of any intended disclosures or requests for disclosure pursuant to the North Carolina Public Records Law. The seller may then choose to seek judicial protection of the confidential information consistent with all applicable laws and regulations. Should a public records request be made for information the seller claims are proprietary in nature, the County will, within a reasonable time, notify the seller of such public records request. The seller shall, within five (5) business days of said notification, provide notice to the County that it does or does not object to the County disclosing the requested information pursuant to the subject public records request. If the seller objects to the disclosure of the requested information, the seller agrees that it shall be solely responsible for the defense of and the cost of defending any claim or complaint against the County for its refusal to disclose confidential information. The seller agrees that if any such complaint or claim is filed it will indemnify the County and will reimburse the County for any and all damages awarded against the County its refusal to disclose the requested information. The seller agrees that it releases the County from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the release or disclosure or failure by the County to release or disclose confidential information. The seller further agrees that it waives the right to file any court action for any such release, disclosure, or failure to release or disclose confidential information.
- 25 **NON-APPROPRIATION:** No provision of any agreement between the County and the seller (the "Agreement") shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any Constitutional debt limitation. No provision of the Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of the Constitution of North Carolina. The Agreement shall not directly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any fiscal year in which the Agreement is in effect; provided, however, that any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due under the Agreement will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Agreement, and the taxing power

**Henderson County
Terms and Conditions**

of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement. No provision of the Agreement shall be construed to pledge or create a lien of any class or source of the County's moneys, nor shall any provision of the Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict this provision and any other provision of the Agreement, this provision shall take priority and control.





00263926

Final Audit Report

2022-05-11

Created:	2022-05-11
By:	Charles Russell Burrell (rburrell@hendersoncountync.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGOVknTPQPqte-QmOOAEMOwIAYP7GOa_Y

"00263926" History

-  Document created by Charles Russell Burrell (rburrell@hendersoncountync.gov)
2022-05-11 - 5:48:09 PM GMT
-  Document emailed to Kieran Roe (kieran@conservingcarolina.org) for signature
2022-05-11 - 5:50:22 PM GMT
-  Email viewed by Kieran Roe (kieran@conservingcarolina.org)
2022-05-11 - 9:55:42 PM GMT
-  Document e-signed by Kieran Roe (kieran@conservingcarolina.org)
Signature Date: 2022-05-11 - 9:56:17 PM GMT - Time Source: server
-  Agreement completed.
2022-05-11 - 9:56:17 PM GMT



Adobe Acrobat Sign

**Henderson County
Board of Commissioners**

1 Historic Courthouse Square • Suite 1 • Hendersonville, NC 28792
Phone (828) 697-4808 • Fax (828) 692-9855 • www.hendersoncountync.gov

William G. Lapsley
Chairman
Rebecca K. McCall
Vice-Chairman



J. Michael Edney
Daniel J. Andreotta
David H. Hill

NOTICE

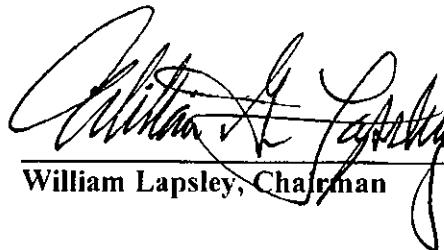
***PUBLIC HEARING**

DATE: Monday, June 6, 2022

TIME: 5:30 p.m.

PLACE:
Commissioners' Meeting Room
1 Historic Courthouse Square, Hendersonville

SUBJECTS TO BE CONSIDERED: **Public Hearing for Fiscal Year 2022- 2023
Recommended Budget**



William Lapsley, Chairman

- Action may be taken with respect to any of the items to be discussed at this meeting

EXHIBIT 1

Bat Fork Creek Property Restoration Scope of Work

Conserving Carolina will oversee design, permitting and implementation of stream, wetland and floodplain restoration on the Dodd Meadows property along Bat Fork Creek in Henderson County. Restoration practices will include:

- Wetland restoration, preservation, and enhancement,
- Stream restoration, preservation, and enhancement,
- Aquatic habitat restoration,
- Native riparian and floodplain buffer planting,
- Invasive plant control and removal,
- Selective floodplain berm removal to promote floodplain access and flood water storage, and
- Streambank stabilization.

Deliverables:

1. Develop Preliminary Restoration Design Plans based on Ecological Objectives and Property Constraints
2. Develop 60% Engineering Design Plans for Permitting
3. Develop Hydraulic Model Flood Studies for No-Rise/No-Impact Floodplain Permits
4. Submit Applications for USACE/DWR 401/404, NCDEMLR ESC Plan, NCDEQ Stormwater, and Henderson County Floodplain Permits
5. Develop 100% Construction Drawings Following Permit Approvals
6. Implement Restoration Construction and Plantings in Compliance with Permit Conditions
7. Obtain Conservation Easements on the Three Restoration Sites
8. Design and Construct Sustainable Recreational Trails
9. Provide Quarterly Programmatic and Financial Reports to the County

Project Budget:

Expense	
Design and Engineering	\$80,000
Permitting	\$55,000
Construction	\$550,000
Vegetation and Plantings	\$60,000
Trail Design and Construction	\$25,000
Educational Signage	\$5,000
Long-Term Trail and Habitat Management	\$45,000
Long-Term Conservation	\$41,250
Project Management	\$65,000
County Administration Fee	\$23,750
Total Expense	\$950,000

North Carolina Department of Public Safety

Agreement #HENDERSONCO BATFORK 2021-2023

This Agreement is hereby entered into by and between the Department of Public Safety (the "AGENCY") and the Henderson County (the "RECIPIENT") (referred to collectively as the "Parties"). The RECIPIENT's federal tax identification number is 566000307.

1. EFFECTIVE TERM

This agreement shall be effective starting November 18, 2021 and this agreement shall terminate on June 30, 2023.

2. RECIPIENT'S DUTIES

The RECIPIENT shall provide the services as described below:

The RECIPIENT is authorized to use funds by this agreement for for the Bat Fork stream restoration and flood resilience project as directed by the NC General Assembly in Session law 2021-180 (House Bill-105).

The RECIPIENT's scope of work is a complete and concise scope of goods or services supported by this agreement and consistent with language in Session Law 2021-180. See Attachment A.

The RECIPIENT agrees to use the funds in the amounts allocated for the budget cost items set forth in the RECIPIENT's Budget. RECIPIENT may reallocate and/or redistribute among budgeted items up to 10% in overall budget costs without the express written permission of the AGENCY. RECIPIENT agrees that it will not reallocate and/or redistribute any overall budget costs that will exceed 10% on any annual basis without first obtaining the express authorization of the AGENCY in writing.

The RECIPIENT understands and acknowledges that total funding level available under this agreement will not exceed \$950,000. Attachment A provides scope of work and payment amounts to be paid to RECIPIENT. RECIPIENT agrees to complete all sections of the Quarterly or Periodic Status Report & Accounting (Attachment B) following each quarter, and provide all supporting documentation when the quarterly Accounting is submitted.

The RECIPIENT shall provide the following forms: W-9/Electronic Payment/Vendor Verification form (09 NCAC 03M.002), Conflict of Interest Statement (N.C.G.S. 143C- 6-23.(b)). and No Overdue Tax Debt Certification (N.C.G.S. 143C-6-23.(c)) to the Agency.

Pursuant to N.C.G.S 143C-6-8, the RECIPIENT understands and agrees that agreement funding shall be subject to the availability of appropriated funds. However, in the event of agreement termination due to lack of adequate appropriated funds, the AGENCY will ensure that it will pay for services and goods acquired and obligated on or before the notice of agreement termination.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only (S.L. 2021-180, Sec. 5.2 (b)5). State funds for any one employee of a nonprofit are capped at \$120,000.00 (S.L. 2021-180, Sec. 5.3). Funds shall not revert until June 30, 2023 (S.L. 2021-180, Sec. 5.2).

The RECIPIENT understands and acknowledges required compliance with all statutory provisions outlined in N.C.G.S. 143C-6-22 Use of State funds by non-State, and 09 NCAC 03M .0205, Minimum reporting requirement recipient and subrecipient.

AGENCY'S DUTIES & PAYMENT PROVISIONS

The AGENCY shall ensure that funds allocated and disbursed pursuant to Session Law 2021-180, comply with the intent and guidance found in this Session Law and ensure compliance with related state statutes and financial management standards.

The AGENCY shall pay the RECIPIENT a total not to exceed \$950,000. The appropriation shall be distributed on a quarterly basis from North Carolina General Fund for \$237,500 and submit to the AGENCY, along with all required documentation. Once the AGENCY is satisfied that the RECIPIENT has provided all the required documentation, the requested distributions can be processed for payment. The distributions of funds will be coded to 536637 2E50-1175

3. QUARTERLY STATUS REPORTING

The RECIPIENT agrees to provide quarterly, or 90-day project status reports to be sent electronically from the RECIPIENT to the AGENCY and shall at a minimum include:

- a. Period stating beginning balance of the Project Fund.
 - i. Total expenses disbursed (aggregate totals) by the following project uses:
 - a. Employee Expenses (e.g program related staffing).
 - b. Service and Contract expenses (e.g. utilities, telephone, data, lease related expenses).
 - c. Goods (e.g. supplies and equipment) expenses.
 - d. Administration Expenses (e.g overhead & project management).
 - e. Other expenses (e.g. related charges not assigned above and described by recipient).
 - ii. Period ending balance of the RECIPIENT funding disbursed pursuant to this agreement.
 - iii. A descriptive summary of how the funds were used including outcomes and specific deliverables or accomplishments to date

ATTACHMENT B is a copy of the quarterly status tracking report.

- b. Quarterly project status reports shall be emailed to Nancy Gemma; nancy.gemma@ncdps.gov

4. FUNDS MANAGEMENT

The RECIPIENT agrees that funds paid through this contract shall be accounted for in a separate fund and accounting structure within the RECIPIENT's central accounting and grant management system. The RECIPIENT agrees to manage all accounts payable disbursements, check register disbursements and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with this funding allocations described in Section 3 above. Expenditures for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be eligible under this Contract. If eligible, the Recipient and all subrecipients shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their quarterly project status reports.

5. AGREEMENT ADMINISTRATORS

All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Agreement Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Agreement Administrators are set out below. Either Party may change the name, post office

address, street address, telephone number, fax number, or email address of its Agreement Administrator by giving timely written notice to the other Party.

For the AGENCY	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Tara Williams-Brown, Controller NC Department of Public Safety 4220 Mail Service Center Raleigh, NC 27699-4220 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov	Tara Williams-Brown, Controller NC Department of Public Safety 2020 Yonkers Road Raleigh, NC 27604 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov

For the RECIPIENT	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov	Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov

6. MONITORING AND AUDITING

The RECIPIENT acknowledges and agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of the RECIPIENT are subject to being audited, inspected and monitored at any time by the AGENCY upon its request (whether in writing or otherwise). The RECIPIENT further agrees to provide AGENCY staff and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements.

The RECIPIENT acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C.G.S. 159-34, Local Government Finance Act – Annual Independent Audit, rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by the RECIPIENT and are subject to change.

7. TAXES

The RECIPIENT shall be considered to be an independent RECIPIENT and as such shall be responsible for all taxes. The RECIPIENT agrees to provide the AGENCY with the RECIPIENT'S correct taxpayer identification number upon the execution of this Agreement. The RECIPIENT agrees that failure to provide the AGENCY

with a correct taxpayer identification number authorizes the AGENCY to withhold any amount due and payable under this Agreement.

8. SITUS

This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement of this Agreement shall be filed in State court in Wake County, North Carolina.

9. SUBCONTRACTING AND ASSIGNMENT

The RECIPIENT agrees that by assigning or subcontracting any work related to the contract to a subcontractor or SUB-RECIPIENT, that such entities shall comply with the following:

- (a) The RECIPIENT or SUB-RECIPIENT is not relieved of any of the duties and responsibilities of the original contract; and
- (b) The SUB-RECIPIENT agrees to abide by the standards contained in this contract and to shall provide all information to allow the RECIPIENT to comply with these standards.

RECIPIENT agrees that all SUB-RECIPIENTS to this agreement shall comply with the following provisions of the North Carolina Administrative Code: "09 NCAC 03M .0203 SUB-RECIPIENT RESPONSIBILITIES."

10. ADVERTISING

RECIPIENT agrees not to use the existence of this contract, the name of the AGENCY, the or the name of the State of North Carolina as part of any commercial advertising, without prior written approval of the AGENCY.

11. COMPLIANCE WITH LAW

The RECIPIENT shall remain an independent RECIPIENT and as such shall be wholly responsible for the scope of work to be performed under this Agreement and for the supervision of his employees and assistants. The RECIPIENT represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the AGENCY. The RECIPIENT shall be responsible for compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of his business and work performance under this Agreement, including those of Federal, State, and local agencies having appropriate jurisdiction.

The Recipient acknowledges and agrees that, in its conduct under this Contract and in connection with any and all expenditures of grant funds made by it, it shall comply with the cost principles enunciated in the Code of Federal Regulations, 2 CFR, Part 200. The Recipient further acknowledges and agrees that, if it grants any of the grant funds awarded hereunder to one or more sub-recipients or sub-sub-recipients, the Recipient shall, by contract, ensure that said cost principles are made applicable to and binding upon any and all such sub-recipients, sub-sub-recipients, etc. in their handling, use and expenditure of the funds awarded to the Recipient hereunder.

12. TERMINATION OF AGREEMENT

This agreement may be terminated by mutual consent upon sixty (60) days written notice to the other party, or as otherwise provided by law. As soon as reasonably possible following termination of this agreement, the amount of any residual unexpended funds shall be transferred to the AGENCY.

13. AMENDMENTS

This Agreement may be amended in writing which documents approval of changes by both the AGENCY and the RECIPIENT.

14. AGREEMENT CLOSE-OUT PROCESS

The RECIPIENT agrees to submit to the AGENCY a complete performance and expenditure status report (final report) within ninety (90) days after expiration of this agreement June 30, 2023:

- 1) A complete accounting of how the appropriated funds were used;
- 2) A complete performance status report; and
- 3) A Certification stating the funds were used for the purpose appropriated (AGENCY will supply template).

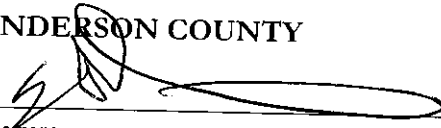
The above noted reports shall include RECIPIENT and SUB-RECIPIENT reporting information related to the above noted quantitative results and accomplishments. RECIPIENT and any SUB-RECIPIENTS agree that all program activity results information reported shall be subject to review and authentication as described in Paragraph 7 and RECIPIENT will provide access to work papers, receipts, invoices and reporting records, if requested by the AGENCY, as the AGENCY executes any audit internal audit responsibilities.

RECIPIENT will be deemed noncompliant if its final report is not submitted within the 90-day period stated above. Once the complete final performance and financial status report package has been received and evaluated by the AGENCY, the RECIPIENT will receive official notification of agreement close-out. The letter will inform the RECIPIENT that the AGENCY is officially closing the agreement and retaining all agreement files and related material for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.

15. AUTHORIZED SIGNATURE WARRANTY

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement. **In Witness Whereof**, the RECIPIENT and the AGENCY have executed this Agreement in duplicate originals, with one original being retained by each party.

HENDERSON COUNTY

Signature  Date 5/19/22

Jimmy Brissie

Director

Printed Name

Title

NC DEPARTMENT OF PUBLIC SAFETY

Signature _____ Date _____

Tara Williams-Brown

Controller

Printed Name

Title

**Henderson County
Terms and Conditions**

By acceptance of a purchase order with Henderson County, or by entering into the contract or agreement with Henderson County to which this "Terms and Conditions" is attached, the vendor to Henderson County or contractor with Henderson County (as the situation may be, hereinafter referred to as the "seller"), declares that all supplies, materials, equipment, apparatus and services furnished to Henderson County pursuant to the purchase order or contract/agreement will be furnished according to the following terms and conditions, which terms and conditions shall supersede any language to the contrary in any other documentation of such purchase order or contract/agreement.

1. **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship to Department** shown.
2. **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence, and bills of lading.
3. **PRICE:** All goods and/or services must be billed to Henderson County (County) at prices and quantities not to exceed those stated on the purchase order. All invoices, packages, shipping notices or the like affecting this order shall contain the applicable purchase order number. All prices are quoted F.O.B. Destination unless specifically indicated otherwise.
4. **INVOICES:** Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
6. **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
7. **TAXES:** Henderson County is **NOT Sales Tax-Exempt**. Prices shown on the County's purchase orders do not include tax, however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
8. **AGREEMENT TERMS:** Absent a negotiated contract, this purchase order is limited to the terms and conditions contained on the face and back hereof. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument. This purchase order including all contracts, references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the County and the Seller. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the County.
9. **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the County accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill. The packing list shall be enclosed in each box or package. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. All deliveries on this order must be in full accordance with specifications, properly identified with the purchase order number and must not exceed the quantities specified. The County shall have the right to inspect and test all items supplied under the order before making acceptance. Risk of loss and title to all goods received shall remain with the Seller until the County has made acceptance. Rejected goods shall be returned to the Seller at Seller's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the seller.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless the County, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
11. **INSURANCE:** This purchase order shall be considered a written contract and requires the County to be endorsed as additional insured for General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit/\$2,000,000 aggregate limit for bodily injury, property damage, or personal injury; (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence (if providing professional services); (c) Worker's Compensation Insurance as required by the State of North Carolina General Statutes; (d) Commercial Automobile Insurance applicable to bodily injury and property damage covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 combined single limit. Negotiated written contracts may require additional insurance coverage. A Certificate of Insurance shall be furnished prior to the commencement of services. The Certificate Holder shall be County of Henderson, Attn: Finance Dept., 113 N Main Street, Hendersonville, NC 28792.
12. **APPLICABLE LAWS:** By acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the County against any loss, cost, liability, or damage by reason of seller's violation of any laws.
13. **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the County from entering into contracts with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
14. **IRAN DIVESTMENT:** By acceptance of this purchase order, vendors, contractors, and/or subcontractors certify they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.59, Iran Divestment Act Certification.
15. **FEDERAL FUNDS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
 - A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
 - B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When federal funds are expended by Henderson County, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.
 - C. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable):

Henderson County Terms and Conditions

Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671g.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 C.F.R. § 200.324); Huawei/ZTE Ban (2 C.F.R. 200.216); Domestic Preference Clause (2 C.F.R. 200.322). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

16. **FEMA PROVISIONS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.

- A. **Changes:** Changes or modifications to the original contract will only be allowed if the following provisions are met:
1. The change is within the scope of its grant or cooperative agreement
 2. The amount of the change has budgetary funds available
 3. The change does not fundamentally modify the project and
 4. The change is reasonable for the completion of the project

- B. **Access to Records:** The contractor agrees to provide Henderson County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcripts.

The Contractor agrees to permit any of the forgoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to work being completed under the contract.

- C. **DHS, Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA approval

- D. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- E. **No Obligation by Federal Government:** The Federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

- F. **Program Fraud and False or Fraudulent or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

17. **CANCELLATION:** The County reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the seller to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified or for any other reason which causes the seller not to perform as agreed.

18. **WARRANTY:** The seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the County and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance, or payment by the County. The seller also warrants that the goods do not infringe any patent,

registered trademark or copyright and agrees to hold the County harmless in the event of any infringement or claim thereof. Additionally, seller warrants that the goods are free and clear of all liens and encumbrances and that seller has a good and marketable title to the same.

19. **HAZARDOUS CHEMICALS:** The seller shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements. The seller shall ensure that the County is provided an appropriate current Material Safety Data Sheets (MSDS) with or prior to the initial shipment of a hazardous chemical, and with or prior to the first shipment after the MSDS is updated.

20. **NON-DISCRIMINATION:** The County does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the County are expected to fully comply with the County's non-discrimination policies.

21. **VERBAL AGREEMENT:** The County will not be bound by any verbal agreements.

22. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the seller is an independent contractor and not an agent of the County, and as such, seller, his or her agents and employees shall not be entitled to any County employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension, or retirement benefits.

23. **GOVERNING LAW:** All terms and conditions shall be interpreted in accordance with the laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the County of Henderson, State of North Carolina.

24. **PUBLIC RECORDS.** The seller acknowledges that notwithstanding any other provision to the contrary (including any statements regarding confidential information), this agreement, the confidential information and any documents, memorandum, data, reports, analyses, compilations, records, pricing and evaluation of all or any portion of the transactions contemplated by this agreement may be deemed public records and subject to disclosure, in whole or in part, pursuant to the North Carolina Public Records Law. The County will provide the seller with reasonably prompt notice of any intended disclosures or requests for disclosure pursuant to the North Carolina Public Records Law. The seller may then choose to seek judicial protection of the confidential information consistent with all applicable laws and regulations. Should a public records request be made for information the seller claims are proprietary in nature, the County will, within a reasonable time, notify the seller of such public records request. The seller shall, within five (5) business days of said notification, provide notice to the County that it does or does not object to the County disclosing the requested information pursuant to the subject public records request. If the seller objects to the disclosure of the requested information, the seller agrees that it shall be solely responsible for the defense of and the cost of defending any claim or complaint against the County for its refusal to disclose confidential information. The seller agrees that if any such complaint or claim is filed it will indemnify the County and will reimburse the County for any and all damages awarded against the County its refusal to disclose the requested information. The seller agrees that it releases the County from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the release or disclosure or failure by the County to release or disclose confidential information. The seller further agrees that it waives the right to file any court action for any such release, disclosure, or failure to release or disclose confidential information.

25. **NON-APPROPRIATION:** No provision of any agreement between the County and the seller (the "Agreement") shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any Constitutional debt limitation. No provision of the Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of the Constitution of North Carolina. The Agreement shall not directly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any fiscal year in which the Agreement is in effect; provided, however, that any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due under the Agreement will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Agreement, and the taxing power

**Henderson County
Terms and Conditions**

of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement. No provision of the Agreement shall be construed to pledge or create a lien of any class or source of the County's moneys, nor shall any provision of the Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict this provision and any other provision of the Agreement, this provision shall take priority and control.

00263934

Final Audit Report

2022-05-11


Created:	2022-05-11
By:	Charles Russell Burrell (rburrell@hendersoncountync.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeMamo7SRozYjMnN3ynT8Lg7P5uC5KIZR


"00263934" History

 Document created by Charles Russell Burrell (rburrell@hendersoncountync.gov)
2022-05-11 - 6:09:22 PM GMT

 Document emailed to Kieran Roe (kieran@conservingcarolina.org) for signature
2022-05-11 - 6:10:11 PM GMT

 Email viewed by Kieran Roe (kieran@conservingcarolina.org)
2022-05-11 - 9:48:52 PM GMT

 Document e-signed by Kieran Roe (kieran@conservingcarolina.org)
Signature Date: 2022-05-11 - 9:52:05 PM GMT - Time Source: server

 Agreement completed.
2022-05-11 - 9:52:05 PM GMT



Adobe Acrobat Sign

Local Government Certification

The information provided in this One North Carolina Fund Local Government Application (the "Application") is true, accurate, and complete in all material respects, and does not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein not materially misleading, to my best knowledge and belief. I understand that if the foregoing is not true, this Application may be rejected, a grant made may be revoked or recovered, and Commerce may pursue such other action as it deems appropriate. I understand that if any information provided to Commerce changes, or if any circumstance occurs at any time prior to execution of the program agreements that could impact the decision to award a grant or performance under the grant, I will amend this Application or otherwise inform Commerce of such change, in writing, and Commerce may revoke the grant if it determines that had such information or event been known at the time of the award, Commerce would not have made the award. This Application has been signed by an authorized representative of the Local Government indicated below and the signature is recognized by the Local Government as legally binding on the Local Government.

ATTEST:

Local Government Official

Print Name

Title

Unit of Local Government

Date

State of North Carolina

County of

Witness to and subscribed before me this the

18th day of May, 2022

Notary Public

My Commission Expires: January 5, 2027

